

Message Text

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ORIGIN L-03

INFO OCT-01 NEA-10 IO-13 ISO-00 SSM-03 ACDA-07 DLOS-09
EB-07 SS-15 SP-02 SSO-00 /070 R

DRAFTED BY L:RKEARNEY/L/UNA:AKRECZKO:GDG
APPROVED BY IO:JABAKER
IO/UNP:GBHELMAN
NEA/EGY:DZWEIFEL

-----107958 190135Z /64

O R 190055Z JUL 77
FM SECSTATE WASHDC
TO AMEMBASSY CAIRO IMMEDIATE
INFO USMISSION USUN NEW YORK

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FOR MAYNES

E.O. 11652: N/A

TAGS: PORG, UNGA, EG

SUBJECT: PRE-UNGA CONSULTATIONS WITH EGYPT

REF.: CAIRO 11735

1. THIS TELEGRAM PROVIDES GUIDANCE ON MULTILATERAL
TREATY MAKING PROCESS AND SUCCESSION OF STATES ISSUES
FOR IO ASSISTANT SECRETARY MAYNES' USE IN PRE-UNGA
BILATERALS WITH EGYPT.

2. MULTILATERAL TREATY MAKING PROCESS:

WITH RESPECT TO THE REVIEW OF THE MULTILATERAL TREATY-
MAKING PROCESS, DEPT IS AWARE OF THIS AUSTRALIAN
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INITIATIVE BUT HAS NOT BEEN INVOLVED IN PREPARATION OF
PROPOSAL. EGYPT HAS BEEN APPROACHED TO CO-SPONSOR A
RESOLUTION AT 32ND UNGA AND IS PROBABLY SEEKING OUR
REACTION. PROPOSAL WAS INITIATED BECAUSE OF DISSATIS-
FACTION WITH EFFICIENCY OF EXISTING MECHANISMS. PROPOSAL
WOULD ENCOURAGE STUDY OF ALTERNATIVE METHODS OF TREATY-
MAKING (SUCH AS AD HOC CONFERENCES, UNGA SIXTH COMMITTEE,

AND INTERNATIONAL LAW COMMISSION). US SHARES WITH OTHERS THE CONCERN THAT MOST RECENT TREATY MAKING ATTEMPTS HAVE PROCEEDED SLOWLY AND OFTEN HAVE NOT HAD GENERAL

SUPPORT AT THE END OF THE PROCESS. US WOULD GIVE THOUGHTFUL CONSIDERATION TO ANY PROPOSAL TO REVIEW PROBLEM.

2. SUCCESSION OF STATES:

A. IN APRIL 1977, THE US PARTICIPATED IN A CONFERENCE TO CONCLUDE A TREATY REGARDING THE EFFECT OF SUCCESSION OF STATES (WHETHER BY SEPARATION, DISSOLUTION, UNIFICATION, OR ACHIEVEMENT OF INDEPENDENCE) UPON TREATIES IN FORCE IN THE TERRITORY BEFORE SUCCESSION. THE US SUPPORTS THE CONCLUSION OF A TREATY AND WAS DISAPPOINTED THAT THE CONFERENCE DID NOT COMPLETE ITS WORK. A 1978 SESSION HAS BEEN RECOMMENDED TO COMPLETE THE WORK.

B. WE ASSUME THAT EGYPT IS PRIMARILY INTERESTED IN OUR POSITION ON ARTICLE 12 OF THE DRAFT CONVENTION. IN THE CASE OF NEWLY INDEPENDENT STATES AND OTHER FORMER DEPENDENT TERRITORIES, AS A GENERAL RULE THE DRAFT CONVENTION DOES NOT REQUIRE THAT TREATIES REMAIN IN FORCE IN A NEW STATE AFTER A SUCCESSION OF STATES. HOW-
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EVER, ARTICLE 12 MAKES AN EXCEPTION, INTER ALIA, FOR TREATIES WHICH GRANT RIGHTS FOR THE BENEFIT OF A TERRITORY IN ONE STATE. FOR EXAMPLE, UNDER THIS ARTICLE, THE TREATY WHICH REQUIRES CANADA TO REGULATE ITS USE OF THE COLUMBIA RIVER IN ORDER TO INCREASE ELECTRICAL PRODUCTION IN THE US WOULD NOT BE AFFECTED BY THE SECESSION OF BRITISH COLUMBIA FROM CANADA. THIS ARTICLE IS IMPORTANT TO EGYPT BECAUSE OF TREATIES WITH NEIGHBORING COUNTRIES WHICH GRANT EGYPT SPECIAL BENEFITS AS REGARDS THE NILE. EGYPT SUPPORTS ARTICLE 12 BECAUSE IT MEANS THAT THESE BENEFITS REMAIN DESPITE ANY SUCCESSION OF STATES.

C. US SUPPORTED AND CONTINUES TO SUPPORT ARTICLE 12. WE BELIEVE THAT THESE TREATIES AND TREATIES REGARDING BOUNDARIES SHOULD BE EXEMPTED FROM ABROGATION UPON SUCCESSION BECAUSE THEY RELATE TO VERY BASIC CONTROVERSIES WHICH MAY GIVE RISE TO CONFLICT IF THERE IS NO AGREEMENT. WE FEEL THAT DISSATISFACTION WITH AN AGREEMENT IS LESS LIKELY TO LEAD TO ARMED CONFLICT THAN LACK OF ANY AGREEMENT.

D. AT THE CONFERENCE, TWO AMENDMENTS WERE PROPOSED TO ARTICLE 12. THE FIRST WOULD EXCEPT TREATIES RELATING TO MILITARY BASES, THUS MAKING THOSE TREATIES SUBJECT TO GENERAL RULE OF ABROGATION UPON SUCCESSION.

US SUPPORTED THIS EXCEPTION ON GROUNDS OF ITS OWN PRACTICE AND THAT SUCH AN IMPORTANT POLITICAL DECISION SHOULD NOT BE FORCED ON A NEW STATE. THE SECOND AMENDMENT WOULD EXCEPT TREATIES WHICH IMPEDE THE FULL EXERCISE BY THE SUCCESSOR STATE OF SOVEREIGNTY OVER ITS NATURAL RESOURCES. US OPPOSED SECOND AMENDMENT BECAUSE OF LONGSTANDING DIFFERENCES OVER MEANING AND CONSEQUENCES OF THE SOVEREIGNTY OVER NATURAL RESOURCES PHRASE. IT WOULD BE HELPFUL TO DETERMINE WHETHER EGYPT LIMITED OFFICIAL USE

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WOULD SUPPORT ARTICLE 12 WITHOUT NATURAL RESOURCES CLAUSE (OR SIMILAR LANGUAGE) AT SECOND SESSION.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TREATY COMPLIANCE, SECESSION, INDEPENDENCE, DIPLOMATIC DISCUSSIONS, RELATIONS WITH INTERNATIONAL ORGS
Control Number: n/a
Copy: SINGLE
Sent Date: 19-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE167608
Document Source: CORE
Document Unique ID: 00
Drafter: RKEARNEY/L/UNA:AKRECZKO:GDG
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770267-0981
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770742/aaaabkef.tel
Line Count: 140
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 5b5e9a67-c288-dd11-92da-001cc4696bcc
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: 77 CAIRO 11735
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 29-Mar-2005 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1817078
Secure: OPEN
Status: NATIVE
Subject: PRE-UNGA CONSULTATIONS WITH EGYPT
TAGS: PORG, PDEV, PBOR, EG, US, UNGA, (MAYNES, CHARLES W)
To: CAIRO
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/5b5e9a67-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009